

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4535 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

RAHEMATBEN O MANEK

Versus

DITRICT MAGISTRATE

Appearance:

MS DR KACHHAVAH for Petitioner
MR KC SHAH, A.G.P., for Respondents

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 18/09/96

ORAL JUDGEMENT

1. By way of this petition under Article 226 of the Constitution of India the petitioner - detenu - Rahematben Osmanbhai Manek, has brought under challenge the detention order dated 10th April, 1996 rendered by the respondent No.1 u/s.3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (Act No.16 of 1985), hereinafter referred to as "the PASA Act."

2. The ground on which the impugned order of detention has been passed appear at Annexure : B to the petition. They inter-alia indicate that the petitioner by herself and with the aid of her associates has been carrying on criminal and anti-social activities of storing and selling country liquor and following prohibition offences have been registered in the Jamnagar City "B" Division Police Station, Jamnagar :

1. CR 213/94 U/ss.66(B), 65(E) of the Bombay Prohibition Act. Pending in Court.
2. CR 268/94 U/ss.66B, 65E,F of the Prohi.Act. Pending in Court.
3. CR 323/94 U/ss.66(B), 65(E) of the Bombay Prohibition Act. Pending in Court.
4. CR 444/94 U/ss.66(B), 65(E)(F) of the Bombay Prohibition Act. Pending in Court.
5. CR 105/95 U/ss.66(B), 65(E) of the Bombay Prohibition Act. Pending in Court.
6. CR 276/95 U/ss.66(1)(B), 65(E) of the Bombay Prohibition Act. Pending in Court.
7. CR 522/95 U/s.65F of the Bombay Prohi. Act. Pending in Court.
8. CR 724/95 U/ss.66(B), 65E of the Bombay Prohi. Act. Pending in Court.
9. CR 87/96 U/ss.66(B), 65E of the Bombay prohi. Act. Pending investigation.
10. CR 289/96 U/ss.66B, 65B,C,D,E,F of the Bombay Prohi. Act. Pending investigation.

3. It has been recited that the detenu's anti-social activity tends to obstruct the maintenance of public order and in support of the said conclusion statements of three witnesses have been relied upon. They indicate about the incidents occurring in the month of February & March, 1996. All the incidents indicate abusing and beating the concerned witnesses and creating atmosphere of fear amongst the people.

4. It is on the aforesaid incidents that the

detaining authority has passed the impugned order of detention while also relying upon the aforesaid case lodged against the petitioner. The petitioner has been stamped as a boot-legger within the meaning of section 2(b) of the PASA Act.

5. I have heard the learned Advocate for the petitioner and the learned A.G.P. for the State. The petitioner has challenged the aforesaid order of detention on number of grounds inter-alia on the ground that there is no material to indicate that the detenu's conduct would show that he is habitually engaged in the anti-social activities which can be said to be prejudicial to the maintenance of public order. This is a case of individual incidents affecting law and order and in the facts of the case would not amount to leading to conclusion that the same would affect public order. Reliance has been placed on the following decision of the Apex Court :-

Mustakmiya Jabbarmiya Shaikh V/s. M.M.Mehta, C.P., reported in 1995 (2) G.L.R. 1268, where the incidents were quoted in paras : 11 and 12 of the citation and it has been submitted that facts of the present case run almost parallel to the facts before the Apex Court in Mustakmiya's case (Supra).

6. In Mustakmiya's case reference has been made to the earlier decision in the case of Piyush Kantilal Mehta V/s. Police Commissioner, reported in 1989 Suppl. (1) SCC 322, which was a case of a boot-legger facing prohibition cases concerning a huge quantity of foreign liquor. There also general statements of the witnesses were recorded similar to the statements in the present case. The statements recorded in Mustakmiya's case were more grave in nature. It is, therefore, submitted that the present case is squarely covered by Mustakmiya's case which has in turn referred to Piyush Kantilal Mehta's case (Supra).

7. In reply Mr.K.C.Shah, learned A.G.P. for the State has relied upon a decision in the case of Mrs. Harpreet Kaur Harvinder Singh Bedi V/s. State of Maharashtra and anr., reported in A.I.R. 1992 SC 979. Comparing the facts of the present case with the facts in the case before the Supreme Court, it clearly appears that the decision in Mrs.Harpreet Kaur's case (supra) would not be applicable.

8. There are other grounds of challenge levelled

against the impugned order of detention. However, in view of the fact that the petitioner would succeed directly on the strength of the decision of Mustakmiya's case (*supra*), it is not necessary to deal with the other grounds. Hence, following order is passed :

The impugned order of detention is hereby quashed and set aside. The petitioner - detenu - Rahematben Osmanbhai Manek shall be forthwith set at liberty if she is not required to be detained in any other case. Rule made absolute accordingly.

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